IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4297 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

KISANCHAND G AGRAWAT

Appearance:

1. Special Civil Application No. 4297 of 1991

MR HARDIK C RAWAL for Petitioner No. 1

MR DP VORA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr.H.C.Rawal appearing on behalf of the petitioner Corporation and Mr.D.P.Vora, learned advocate for respondent workman.

In the present petition, the petitioner

Corporation has challenged the award passed by the labour court, Vadodara in Reference No.728 / 1986 dated 30th November, 1990 wherein the labour court, Vadodara has set aside the dismissal order dated 18th July, 1984 and granted reinstatement with continuity of service and with all consequential benefits with full backwages of the interim period. This Court has issued RULE and ad-interim relief has been granted against backwages by order dated 4th July, 1991 and the said interim relief has been ultimately confirmed by this Court vide order dated 1st April, 1992. Learned advocate Mr.H.C.Rawal on behalf of the petitioner Corporation has submitted that in the said accident, in all three persons lost their life and therefore, there was gross negligence on the part of the respondent workman and therefore, considering the evidence led in the departmental inquiry and statement made by the respondent workman, charge has been established against the respondent workman, even though the labour court has come to the conclusion that the charge levelled against the respondent workman is not established considering the judgment given by the appellate criminal court, wherein the respondent workman has been declared acquitted . Mr.Rawal, learned advocate has also submitted that the labour court has considered the decision of the appellate court in criminal case and comparing the finding arrived in the departmental inquiry proceedings, view taken by the labour court is erroneous and therefore, the labour court has erroneously granted reliefs in favour of the respondnet workman. However, learned advocate Mr.Rawal has also submitted that one more aspect that three persons have died in said accident and whose legal heirs and represenatatives must have instituted MACP proceedings agaist petitioner Corporation and therefore the petitioner Corporation has to face such compensation proceedings and ultimately has to bear huge financial loss towards compensation to the legal hei rs and representatives of the deceased persons. Secondly, Mr.Rawal, learned advocate has also submitted that the labour court has granted full backwages which comes to backwages of six years and and therefore also, the petitioner Corporation being publ ic body, will have to bear huge financial burden . Therefore, according to Mr.Rawal learned advocate for petitioner Corporation full backwages awarded by the labour court, is erroneous and the same requires to be quashed and set aside.

Learned advocate Mr.D.P.Vora on behalf of the respondent workman has submitted that in departmental inquiry except reporter, no one was examined. The reporter was not eye witness and there was no evidence in the departmental inquiry proceeding, the misconduct

against the respondent workman and after considering the entire evidence and the decision given by the appellate criminal court, the labour court has rightly come to the conclusion that the charge levelled against the respondnet workman is not proved and therefore, there is no error committed by the labour court in granting relief in favour of the respondent workman.

I have considered submissions of the learned advocates for the parties. It is true that according to the defence of the respondent workman, at the time of accident, break of the vehicle involved in the accident was failed but fact remains tha hree persons died in the said accident. In criminal case, no doubt, the respondent workman has been acquitted. The labour court has considered the decision of the appellate court in criminal case and compared with the departmental inquiry proceedings. No t only that the labour court standby the finding and decision of the appellate court in criminal case and on that basis, the labour court has come to the conclusion that dismissal is required to be set aside. Before the labour court, legality and validi ty of the departmental inquiry proceedings was not challenged but disputed finding has been kept open. Before the labour court, the respondent workman had deposed at Exh.17 wherein he stated that he has completed 11 years of service and he was doing certain miscellaneous work during the interim period. Therefore, it has come on record that the workman was earning some amount during the interim period. However, it is pertinent to note that the petitioner is public body and the petitioner Corporation has to face compensation proceedings filed by the legal heirs of three deceased persons died in the said accident. The labour court has granted full backwages without considering the evidence of the respondent workman wherein, he clearly admitted the fact at Exh.17 he is earning some amount by way of doing some miscellaneous work. This aspect has been totally ignored by the labour court. Therefore, according to my opinion, considering the overall facts and circumstances of the case and one more aspect that the labour court has granted backwages of six years, according to my opinion, if backwages awarded by the labour court is reduced to 50 % of the interim period, will meet the ends of jusitce. However, this Court is not inclined to disturb the releif of reinstatement with continuity of service with all consequential benefits in favour of the respondent workman.

In view of above discussion, present petition requires to be allowed partly and it is ordered

accordingly. The award passed by the labour court, Vadodara in Reference No.728 / 1986 dated 30th November, 1990 stands modified to the effect that the net workman is entitled to 50 % backwages of the interim period instead of full backwages of the interim period as awarded by the labour court. Award in question stands modified accordingly. Rule is made absolute accordingly. The award granting reinsta tement with continuity of service and all consequential reliefs is not disturbed by this Court and same will remain intact. Rule is made absolute accordingly. No order as to costs. Direct service to respondent is permitted.

Date : 15-3-2002 [H. K. RATHOD, J.]

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